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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 REMBRANDT GAMING TECHNOLOGIES, LP,

Case No. 2:12-cv-00775-MMD-GWF

10 Plaintiff,

ORDER

11 v.

(Pltf's Mot. For Entry of Final Judgment –
12 BOYD GAMING CORPORATION, et al.,
dkt. no. 186)

13 Defendants.

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15 Plaintiff Rembrandt Gaming Technologies, LP alleges defendants infringed
16 Plaintiff's "Electronic Second Spin Slot Machine" patent, U.S. Patent No. 6,641,477 ("the
17 '477 Patent"). (See dkt. no. 1.) Following a claim construction hearing, the Court issued
18 an Order addressing disputed claim terms in claim 32 of the '477 Patent ("Claim
19 Construction Order"). (Dkt. no. 185.) Plaintiff now moves for entry of final judgment
20 ("Motion"). (Dkt. no. 186.) Defendants WMS Gaming Inc., Boyd Gaming Corporation and
21 LV Gaming Ventures, LLC (collectively referred to as "Defendants") have opposed (dkt.
22 no. 187) and Plaintiff has replied (dkt. no. 188). For the reasons discussed below, the
23 Motion is granted.

24 Plaintiff seeks entry of final judgment to permit Plaintiff to appeal the Court's
25 Claim Construction Order. (Dkt. no. 186.) Plaintiff concedes that it cannot as a matter of
26 law establish that the accused gaming products infringe claim 32 of the '477 Patent and
27 stipulates to entry of non-infringement without waiving its appellate rights. (*Id.* at 3.)
28 Defendants counter that the Court should enter judgment of non-infringement, but defer

1 entering final judgment to allow Defendants to complete discovery and move for
 2 summary judgment on their affirmative defenses of invalidity and unenforceability, and to
 3 allow Defendants to seek attorney's fees and costs. (Dkt. no. 187.)

4 The Court has discretion to determine whether to address affirmative defenses of
 5 invalidity and unenforceability after a finding of non-infringement. See *Multiform*
 6 *Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1481 (Fed. Cir. 1998) (declining to
 7 require the trial court to decide patent invalidity when the dispute has been disposed of
 8 on other grounds). Defendants argue that the Court should rule on their affirmative
 9 defenses because the issues of invalidity and unenforceability are clear and resolution at
 10 this stage would avoid the unnecessary costs of having these issues be decided in a
 11 subsequent appeal should the Federal Circuit reverse on the issue of non-infringement.
 12 However, Defendants' request to complete discovery before moving for summary
 13 judgment undermines their suggestion that resolution of these is clear. The Court agrees
 14 with Plaintiff that continued litigation on Defendants' affirmative defenses would
 15 unnecessarily increase costs for the parties. The Court will enter judgment as to non-
 16 infringement and decline to address the affirmative defenses of invalidity and
 17 unenforceability. See *Bally Tech., Inc. v. Bus. Intelligence Sys. Solutions, Inc.*, No. 2:10-
 18 CV-00440-PMP-GWF, 2012 WL 3656495 at *12 (D. Nev. Aug. 23, 2012) ("A finding of
 19 no infringement renders moot an affirmative defense of invalidity of a patent infringement
 20 claim.") (citing *PODS, Inc. v. Porta Stor, Inc.*, 484 F.3d 1359, 1368 (Fed. Cir. 2007)
 21 (declining to consider arguments relating to affirmative defense of invalidity because
 22 finding of non-infringement renders such affirmative defense moot)).

23 It is therefore ordered that Plaintiff's motion for entry of final judgment (dkt. no.
 24 186) is granted. The Clerk is directed to enter judgment of non-infringement in favor of
 25 Defendants and close this case.

26 DATED THIS 5th day of April 2016.



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 28 MIRANDA M. DU
 UNITED STATES DISTRICT JUDGE